

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NYSE-2006-105 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-105. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2006-105 and should be submitted on or before December 29, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54849; File No. SR-NYSE-2006-104]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Waive Initial Listing Fee and One-Time Special Charge in Connection With Listing New Class of Common Shares Payable by Any Company Listed on Another National Securities Exchange That Transfers the Listing of Its Primary Class of Common Shares to the NYSE**

November 30, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 29, 2006, The New York Stock Exchange LLC ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared substantially by NYSE. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NYSE proposes to amend Section 902.03 of its Listed Company Manual to provide that there shall be no initial listing fee payable by any company listed on another national securities exchange that transfers the listing of its

primary class of common shares to the Exchange. The Exchange will eliminate initial listing fees for issuers listed on other national securities exchanges that transfer their listing to the Exchange on or after November 29, 2006. In addition, the Exchange will waive with respect to such issuers the special one-time charge of \$37,500 payable in connection with the initial listing of any class of common shares. The text of the proposed rule change is available at [www.nyse.com](http://www.nyse.com), at the NYSE, and at the Commission's Public Reference Room.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

NYSE proposes to amend Section 902.03 of its Listed Company Manual to provide that there shall be no initial listing fee payable by any company listed on another national securities exchange that transfers the listing of its primary class of common shares to the Exchange. NYSE will eliminate entry and application fees for exchange issuers that transfer their listing to the Exchange on or after November 29, 2006. In addition, the Exchange will waive with respect to such issuers the special one-time charge of \$37,500 payable in connection with the initial listing of any class of common shares. For issuers that have paid these fees, the Exchange will refund the money. Companies transferring from other national securities exchanges will still be required to pay the annual listing fee payable by all companies, prorated for the first portion of a calendar year after the listing date.

Companies transferring from other national securities exchanges will be subject to the same level of annual fees and listing of additional shares fees as other NYSE issuers. The proposed rule change will not affect the Exchange's commitment of resources to its regulatory oversight of the listing

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> NYSE gave the Commission written notice of its intention to file the proposed rule change on November 29, 2006. The Commission reviewed the proposed rule change and gave NYSE permission to file the proposed rule change on the same day. NYSE has asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

process or its regulatory programs. Specifically, companies that switch their listing will be reviewed for compliance with Exchange listing standards in the same manner as any other company that applies to be listed on the Exchange. The Exchange will conduct a full and independent review of each issuer's compliance with the Exchange's listing standards.

The Exchange believes that the elimination of such fees is justified on several grounds. An issuer that already paid initial listing fees to an exchange when it became a publicly traded company is reluctant to pay a second initial listing fee to another listing venue, even if it concludes that the Exchange offers the issuer and its investors superior services and market quality. Even if an issuer concludes that the Exchange would provide a superior market for its stock, the benefits of the switch must currently be weighed against the cost of initial inclusion, which can be as much as \$250,000. Since the expected benefits of the switch would be diffused among the issuers' investors and realized over time, but the initial listing fees must be paid by the issuer immediately, the Exchange is concerned that issuers that stand to benefit may nevertheless opt to forgo a switch. As such, the Exchange believes that assessing the initial fees against issuers that have already paid fees to list on another market imposes a burden on the competition between exchange markets and markets other than exchange markets, a competition that the Exchange believes is one of the central goals of the national market system. This concern is particularly great in light of the fact that the Commission has approved the waiver of initial listing fees by Nasdaq with respect to companies transferring from other national securities exchanges.<sup>6</sup>

The Exchange understands that the effect of this proposed rule change will be to impose a lower level of listing fees on switching issuers than on some other issuers. In light of the fact that the Exchange will collect the same level of annual fees and listing of additional shares fees from such issuers, however, the Exchange believes that the difference does not constitute an inequitable allocation of fees. In light of a switching issuer's prior payment to another market, the Exchange believes that eliminating initial fees for switching issuers is entirely consistent

with an equitable allocation of listing fees.

The Exchange does not expect the financial impact of this proposed rule change to be material, either in terms of increased levels of annual fees from switching issuers or in terms of diminished entry fees. Quite simply, even with the proposed rule change in place, the Exchange understands that a change in listing venue is a major step for an issuer, and therefore the Exchange does not expect that the number of switching issuers in a given time frame will be sufficient to have a material effect on financial resources. Accordingly, the proposed rule change will not impact the Exchange's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

## 2. Statutory Basis

NYSE believes the proposed rule change is consistent with the requirement under Section 6(b)(4)<sup>7</sup> of the Act that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities, and the requirement under Section 6(b)(5)<sup>8</sup> of the Act that an exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and are not designed to permit unfair discrimination between issuers. In light of a switching issuer's prior payment to another market, the Exchange believes that the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory because the Exchange expects that, on average, the review of companies transferring from other national securities exchanges to the Exchange will be less costly than the review of a previously unlisted company, as the issuer will have previously been subject to corporate governance requirements very similar to those of the Exchange. The Exchange believes that the fee waiver will make it easier for companies to transfer among national securities exchanges and will remove a competitive disadvantage the Exchange currently has vis a vis Nasdaq and is therefore designed to perfect the mechanism of a free and open market.

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

necessary or appropriate in furtherance of the purpose of the Act.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

NYSE has asked that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>11</sup> Because waiver of these fees will enable NYSE to compete for listings with Nasdaq, the Commission believes waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>12</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> See Securities Exchange Act Release Nos. 50740 (November 29, 2004), 69 FR 70299 (December 3, 2004) (SR-NASD-2004-140) (notice) and 51004 (January 10, 2005), 70 FR 2917 (January 18, 2005) (approval order).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2006-104 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-104. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2006-104 and should be submitted on or before December 29, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54860; File No. SR NYSE-2006-76]

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change, as Amended, Relating to Exchange Rule 104.10 ("Dealings by Specialists")**

December 1, 2006.

**I. Introduction**

On September 22, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend specialist stabilization requirements set forth in NYSE Rule 104.10 ("Dealings by Specialists"). The proposed rule change was published for comment in the **Federal Register** on September 28, 2006.<sup>3</sup> The Commission received five comment letters<sup>4</sup> from one commenter and two comment response letters from NYSE.<sup>5</sup> On October 25, 2006, NYSE filed Amendment No. 1 to the proposed rule change.<sup>6</sup> This notice and order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.<sup>7</sup>

**II. Description of the Proposal**

NYSE Rule 104 governs specialist dealings and includes, among other things, restrictions upon specialists' ability to trade as a dealer in the stocks in which he or she is registered. Under NYSE Rule 104(a), specialists are not permitted to effect transactions on the Exchange for their proprietary accounts in any security in which the specialist

is registered, "unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market \* \* \*." This restriction is known as the "negative obligation." In particular, NYSE Rules 104.10(5) and (6) expand upon the negative obligation with regard to specific types of proprietary transactions. These sections further define the instances when a specialist is restricted in his or her ability to trade in relation to the direction of the market.

*A. Current Specialist Stabilization Rules*

Specifically, current NYSE Rule 104.10(5)(i) provides that specialist proprietary transactions are to be effected in a reasonable and orderly manner in relation to the general market, the market in a particular stock, and the adequacy of the specialist's position to the immediate and reasonably anticipated needs of the market. The rule further provides that, unless it is to render the specialist's position in a stock adequate for current or reasonably anticipated needs of the market, a specialist should not effect a non-stabilizing transaction (*i.e.*, a transaction with the trend of price movement) for the specialist's account when acquiring or increasing a position. In this regard, the rule restricts specialists from purchasing stock at a price above the last sale (in the same trading session) and purchasing more than 50% of the stock offered on a "zero plus tick," *i.e.*, at the same price as the last sale, when such last sale price was higher than the previous, differently priced sale in the stock on the Exchange. Specialists are, however, permitted to effect these types of transactions with Floor Official approval or in less active markets where such transactions are an essential part of a proper course of dealings and where the amount of stock involved and the price change, if any, are normal in relation to the market.

NYSE Rule 104.10(6) sets forth the specialist's stabilization requirements when liquidating or reducing a position. This rule provides that such trades should be effected in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular security, and the adequacy of the specialist's position to meet the immediate and anticipated needs of the market in the security. Specialists are permitted to liquidate or reduce a position by selling stock on a "direct minus tick," *i.e.*, selling stock at a price lower than the price of the last sale on the Exchange, or by purchasing stock on a "direct plus tick," *i.e.*, at a price higher than the price of the last

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 54504 (September 26, 2006), 71 FR 57011 ("Stabilization Proposal").

<sup>4</sup> See letters from George Rutherford to the Commission, dated October 11, 2006 ("Rutherford Letter I"); October 20, 2006 ("Rutherford Letter II"); October 26, 2006 ("Rutherford Letter III"); November 2, 2006 ("Rutherford Letter IV"); and November 14, 2006 ("Rutherford Letter V").

<sup>5</sup> See letters from Mary Yeager, Assistant Secretary, NYSE, to Nancy M. Morris, Secretary, Commission, dated November 6, 2006 ("NYSE Letter I") and November 29, 2006 ("NYSE Letter II").

<sup>6</sup> For a description of Amendment No. 1, see Section II.D., *infra*.

<sup>7</sup> The proposed rule change, as amended by Amendment No. 1, was approved on a temporary, pilot basis in File No. SR-NYSE-2006-82. See Securities Exchange Release No. 54578 (October 5, 2006), 71 FR 60216 (October 12, 2006) ("Phase 3 Pilot").

<sup>13</sup> 17 CFR 200.30-3(a)(12).